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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,677	01/04/2002	Stephen Brian Falder	16644/09003CIP	9699

7590 05/18/2004

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/039,677	Applicant(s) FALDER ET AL.	
	Examiner Alton N. Pryor	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1,46-54,56,58,59,61,62,70,71,78,81-100,103 and 104 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,46-54,56,58,59,61,62,70,71,78,81-100,103,104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/8/04</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

I. Rejection of claims 61,78,86,87,92-98,101 under 35 USC 112, 2<sup>nd</sup> paragraph will not be maintained. Applicant has replaced "benzenethaminium" by "benzenemethanaminium".

II. Rejection of claims 1,46-54,56,58-62,70,71,80,83-85,88-90,92,95-97,100,103 under 35 USC 102(b) in view of Jackson (GB '171) on record will not be maintained for reason on record and reason as follows. The claims have been amended to define the second compound as silanes, soya lecithins, siloxanes, and mixtures thereof. Claims 79,80,103 have been cancelled.

III. Rejection of claims 72-98 under 35 USC 112, 2<sup>nd</sup> paragraph will not be maintained for the following reason. Applicant has amended claims to clarify the active step to include "applying the antimicrobial composition to a surface".

Applicant's arguments filed 3/1/04 have been fully considered but they are not persuasive. See argument below.

IV. Rejection of claims 1,46-54,56,58-62,70,71,78-103 under 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs will be maintained for reason on record and reason as follows.

Preventive language is not acceptable in claims.

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 46-54, 56, 58, 59, 61, 62, 70, 71, 78, 82-100, 103, 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson on record in view of Sokol et al (CA 1087955; 10/21/80). Jackson teaches a bacteriologically disinfectant (cleaning agent) composition comprising 0.02-0.2% quaternary compounds such as cetylpyridinium chloride (first compound - hydrophobic with polar nature), or alkyl dimethyl benzyl ammonium (benzalkonium) chlorides (first compound - hydrophobic with polar nature), plus 10% monohydric alcohols such as isopropyl alcohol plus polyhydric alcohols such as polyethylene glycol (second compound - hydrophilic compound or C12-C20 surfactant) plus 0.01-0.15 % phenols such as 3-methyl-4-chlorophenol (first antimicrobial agent). Jackson teaches a method of applying the disinfectant composition to surfaces for the purpose of killing bacteria. See abstract, page 4 lines 7-24, page 5 line 11 – page 6 line 5, claims 1-7. Jackson teaches all that is recited in claims except for the composition comprising 1 to 4% polyethylene glycol; a formulation comprising 0.5-2% of the instant antimicrobial composition; and the instant method of adding and mixing ingredients to manufacture the antimicrobial composition. Jackson also does not teach the instant composition comprising a polysiloxane. However, Sokol teaches an antibacterial composition comprising polysiloxane. Jackson teaches that the composition is applied to contaminated surfaces to control bacteria growth. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Jackson to include the polysiloxane taught by Sokol. One having

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ordinary skill in the art would have been motivated to do this in order to enhance the activity of the composition. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of polyethylene glycol to be used in the antimicrobial composition and the optimum amount of antimicrobial composition to be used in a formulation. One would have been motivated to do this in order to develop the most effective composition for disinfecting a surface. In a method of preparation the simple act of adding and mixing ingredients is well known and therefore unpatentable.

***Election / Other Matters***

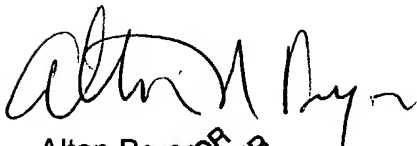
The elected invention comprising benzenethanaminium N-dodecyl-N,N-dimethylchloride is not allowable. See rejection above.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
Alton Pryor  
Primary Examiner  
ANTON N. PRYOR  
PRIMARY EXAMINER  
6/16